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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROBERT CHARLES BURNS,
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13 v. Petitioner,
14 UNITED STATES OF AMERICA,
15 Respondent.

Case No. 12cv1075 BTM(WVG)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS**

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17 Petitioner has filed a Petition for a Writ of *Audita Querela* pursuant to the All Writs Act.
18 Petitioner has also filed a motion to proceed in forma pauperis.

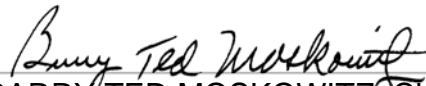
19 It appears that Petitioner has sufficient funds in his account to pay the filing fee.
20 Therefore, Petitioner's motion to proceed in forma pauperis is **DENIED**.

21 If Petitioner wishes to proceed with this lawsuit, Petitioner must pay the \$350 filing fee
22 in full. However, the Court cautions Petitioner that the Ninth Circuit has held that a prisoner
23 may not challenge a federal conviction or sentence by way of a petition for a writ of *audita*
24 *querela* when that challenge is cognizable under § 2255. United States v. Valdez-Pacheco,
25 237 F.3d 1077, 1080 (9th Cir. 2001). The fact that the prisoner is precluded from raising his
26 claims in a § 2255 motion by the provisions of the Anti-terrorism and Effective Death Penalty
27 Act of 1996 that bar successive petitions, does not make the remedy of a writ of *audita*
28 *querela* available to him. Id.

1 If Petitioner still wishes to proceed with this lawsuit, Petitioner must pay the \$350 filing
2 fee on or before **July 2, 2012**. If Petitioner fails to do so, the Court will dismiss this case.

3 **IT IS SO ORDERED.**

4 DATED: June 4, 2012

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6 BARRY TED MOSKOWITZ, Chief Judge
7 United States District Court
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